

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM JAMES SHEFFIELD,

Defendant-Appellant.

UNPUBLISHED

May 20, 2003

No. 236746

Berrien Circuit Court

LC No. 95-003908-FH

Before: Saad, P.J., and Meter and Owens, JJ.

PER CURIAM.

The jury convicted defendant of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to 9 to 48 months in prison for the felonious assault conviction and to two years in prison for the felony-firearm conviction. He appeals as of right, and we affirm.

Defendant says that he was denied the effective assistance of counsel because of his trial counsel's failure to object to inadmissible "bad acts" evidence.¹ We disagree.

¹ Whether the trial court properly reached the merits of defendant's amended motion for new trial is moot because this Court vacated the trial court's September 1, 1999 order granting a new trial and vacating the judgment of sentence with prejudice. If a subsequent event renders it impossible for this Court to fashion a remedy, the issue becomes moot. *People v Briseno*, 211 Mich App 11, 17; 535 NW2d 559 (1995). Furthermore, under the law of the case doctrine, this Court is bound by its earlier decision at all subsequent stages of litigation. *Johnson v White*, 430 Mich 47, 53; 420 NW2d 87 (1988). Defendant urges this Court to validate the trial court's decision to reach the merits of his amended motion for new trial *in case* the prosecutor challenges that decision on appeal. To the extent that defendant challenges the trial court's previous decision to consider his motion and to vacate his convictions and sentence, he is not an aggrieved party and lacks standing to appeal that stage of the trial court's decision that was favorable to him. *Dep't of Consumer & Industry Services v Shah*, 236 Mich App 381, 385; 600 NW2d 406 (1999). Further, though defendant contends that plaintiff could potentially raise this issue on appeal as alternate grounds for affirmance, an appellee is limited to the issues raised by the appellant unless he cross-appeals as provided in MCR 7.207. *People v Gallego*, 199 Mich App 566, 575; 502 NW2d 358 (1993). An appellee may not raise alternate grounds for affirmance where those grounds extend beyond a trial court's decision. *In re Herbach Estate*,
(continued...)

“In order to establish a claim of ineffective assistance of counsel, a defendant must show that counsel’s performance fell below an objective standard of reasonableness and that, but for defense counsel’s errors, there was a reasonable probability that the result of the proceeding would have been different.” *People v Ortiz*, 249 Mich App 297, 311; 642 NW2d 417 (2002), citing *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994).

The officer’s reference to the marijuana found in defendant’s home was inadmissible because the evidence was not introduced for a proper purpose. However, in order for trial counsel’s failure to object to inadmissible evidence to amount to ineffective assistance of counsel, defendant must establish that this failure was a serious error that prejudiced defendant. *People v Ullah*, 216 Mich App 669, 685; 550 NW2d 568 (1996). Defendant has failed to establish prejudice. There was only one passing reference to the marijuana throughout the trial, i.e., an officer’s testimony that he found marijuana in an end table. Moreover, because possession of marijuana is a different offense from the charges defendant faced, it would have been difficult for the jury to conclude that defendant started the altercation with the police officer victim because he possessed marijuana. Further, as the trial court recognized, defendant himself was never identified as the actual possessor of the marijuana. Under these circumstances, defendant has failed to establish that the outcome of trial would have been different had trial counsel objected to this inadmissible evidence. Accordingly, we find no merit to defendant’s argument that he was deprived of his right to effective assistance of counsel.

Also, defendant claims that the trial court abused its discretion when it admitted a videotape into evidence and denied defendant’s new trial motion despite the fact that the prosecutor failed to properly authenticate the tape. We review the trial court’s decision to admit or exclude this evidence for an abuse of discretion. *People v McMillan*, 213 Mich App 134, 137; 539 NW2d 553 (1995). MRE 901 governs how to authenticate evidence:²

(a) The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. [MRE 901].

MRE 901(b)(1) provides, by way of illustration, that one way to authenticate a matter is to present testimony of a witness with knowledge that “a matter is what it is claimed to be.”

At the evidentiary hearing, the police chief testified that the proffered videotape was the original because it bore a distinctive number indicating that it belonged to a series of tapes from the police department. The chief further testified that he recognized the handwritten number as the handwriting of an officer in charge of general evidence at the department. The chief also noted that the tape was a Sony, which was the same brand as the group of tapes purchased in that series. Further, although the chief admitted that the proffered tape did not bear an evidence tag as the original had, he explained that such tags are typically removed before viewing a tape

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230 Mich App 276, 284; 583 NW2d 541 (1998). For these reasons, we need not address the merits of defendant’s claim.

² See also *People v Berkey*, 437 Mich 40, 50; 467 NW2d 6 (1991).

because the tags can get stuck in the VCR. In addition, the police officer who was the victim in this case testified that the proffered tape bore the number ninety-six and that he noted in his November 10, 1995 daily activity sheet that he used tape number ninety-six that day.

Because the testimony established that the tape was in fact the original tape, we conclude that the trial court did not abuse its discretion when it admitted the tape into evidence.³ Further, although we note that plaintiff failed to establish a perfect chain of custody regarding the videotape, we have not required a perfect chain of custody in order for evidence to be admissible. *People v White*, 208 Mich App 126, 130; 527 NW2d 34 (1994). Once the proffered evidence is shown to be what its proponent claims, deficiencies in the chain of custody affect the weight of the evidence, not its admissibility. *Id.*, 130-131. Therefore, we hold that the trial court did not abuse its discretion when it admitted the videotape into evidence.

Defendant also argues that the trial court abused its discretion when it denied his motion for new trial because the prosecutor's failure to establish a chain of custody of the videotape violated his federal constitutional due process rights.

In *Brady v Maryland*, 373 US 83, 87; 83 S Ct 1194; 10 L Ed 2d 215 (1963), the United States Supreme Court held that it violates due process for the prosecution to suppress evidence a defendant requests if the evidence is both favorable to a defendant and material to guilt or punishment. Defendant has not established a *Brady* violation because he failed to establish that the videotape was favorable to him. On the contrary, the circuit court viewed the tape and found that the tape had no exculpatory value. Moreover, because the videotape was not exculpatory, defendant has also failed to establish that, had the tape been produced, the outcome of the proceedings would have been different. Accordingly, defendant has not established a violation of due process under *Brady*.⁴

Affirmed.

/s/ Henry William Saad
/s/ Patrick M. Meter
/s/ Donald S. Owens

³ As discussed at oral argument, the record reflects that defendant sought to test the videotape and recording device to determine whether anyone altered the videotape. The trial court loaned defendant \$1,200 to perform the testing but, after the tests were complete, defendant declined to produce the test results.

⁴ Defendant also asserts that he was denied due process under *Arizona v Youngblood*, 488 US 51; 109 S Ct 333; 102 L Ed 2d 281 (1988). In *Youngblood*, the United States Supreme Court held that a failure to preserve evidence that is potentially useful does not amount to a denial of due process absent a showing of bad faith on the part of the police. *Id.* at 58. Because we hold that the tape was indeed preserved, this issue is moot.